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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,058	08/08/2001	Robert B. Seebeger	910.132	6939

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EXAMINER

HARMON, CHRISTOPHER R

ART UNIT PAPER NUMBER

3721

DATE MAILED: 12/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/928,058

Applicant(s)

SEEBEGER ET AL.

Examiner

Christopher R Harmon

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-25 and 67-82 is/are pending in the application.
- 4a) Of the above claim(s) 74-82 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-25 and 67-82 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) 74-82 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Newly submitted claims 74-82 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The new invention and previously existing claims are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, newly submitted invention has separate utility such as injecting three fluids into a cap and container. See MPEP § 806.05(d).

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 74-82 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 67-68 and 70-73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taggart (US 6,475,435) in view of Takehana et al. (US 4,888,936).

Taggart discloses an apparatus and method for sterile packaging comprising fluid manifold 126; fluid shoe 150; wiper 216; pair of roller arms for holding caps (see figures 10-13). Manifold 126 and shoe 150 are in communication with each other and the other sterile air dispensers in the sterile tunnel 90. The fluid manifold 126 dispenses a hot sterile vapor (hydrogen peroxide solution), which is later dried by hot sterile air out of shoe 150. The fluid shoe of Taggart does not provide a fluid to the caps however Takehana et al. disclose a fluid dispensing shoe which dispenses a fluid to both containers and caps located in holding arms and then applied by wiper 9 (see figure 2).

It would have been obvious to one of ordinary skill in the art to use the teachings of Takehana in the invention to Taggart for applying caps to bottles in a sterile manner.

3. Claims 1-8, 10-25, and 69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taggart (US 6,475,435) in view of Takehana et al. (US 4,888,936) and further view of Van Den Akker et al. (US 5,758,476).

In response to the traversal of Official Notice previously asserted by the examiner, Van Den Akker et al. directly disclose a capper with rotatably mounted arms 30. The holding arms of Takehana, do not seem to be rotatably affixed to the frame however securing positioning arms in a rotatable configuration would have been obvious to one of ordinary skill in the art at the time the invention was made to include the teachings of Van Den Akker et al. in the modified invention to Taggart in order to secure the caps on the containers.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R Harmon whose telephone number is 5712724461. The examiner can normally be reached on Monday-Thursday from 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 5712724467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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**EUGENE KIM
PRIMARY EXAMINER**